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# In the Supreme Court of the United States

OCTOBER TERM, 1971.

No. 71-752.

STANLEY KARL THOMAS,

*Petitioner,*

vs.

STATE OF OHIO,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, NINTH JUDICIAL DISTRICT OF OHIO.

## BRIEF FOR RESPONDENT IN OPPOSITION.

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## BRIEF FOR RESPONDENT IN OPPOSITION.

### OPINIONS OF THE COURTS BELOW.

The opinions of the lower courts were not reported. Petitioner's case was heard first in the Court of Common Pleas of Lorain Couhty, Ohio, Case No. 15050. The case was submitted to a panel of three judges and the Petitioner was found guilty of second degree murder by a 2 to 1 majority of said panel.

Petitioner appealed to the Court of Appeals for Lorain County in Case No. 1911, but the decision of the Court of Common Pleas was affirmed. A copy of the opinion of the Ninth Judicial District Court of Appeals is attached hereto as Appendix B.

Motion for leave to appeal in the Supreme Court of Ohio was denied without this Petitioner being afforded an oral hearing.

## JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

## QUESTIONS PRESENTED.

(1) Was the petitioner denied due process in violation of his constitutional rights when his bail was revoked without notice and without hearing? In other words, once bail is set, can it be revoked without cause, without notice and without hearing?

(2) Was the Petitioner denied the right of trial by an impartial trier of fact when the majority of said panel of judges revoked the bail of the Petitioner without cause, without notice and without hearing?

(3) Was the Petitioner denied the right of trial by an impartial trier of fact and due process of law in violation of his constitutional rights by the insistence of the trial court to commit said Petitioner to Lima State Hospital for the Criminally Insane for observation on the date of trial when there was no claim that said Petitioner was then and there under mental disability, and any such possible claim was expressly waived by the Petitioner and his Counsel?

## CONSTITUTIONAL AND STATUTORY PROVISIONS WHICH THE CASE INVOLVES.

**Constitution of the United States:**

Amendment XIV, Section 1, Clause 2:

". . . nor shall any State deprive any person of life, life, liberty or property without due process of law . . ."

Amendment VI:

"In all criminal prosecutions, the accused shall be entitled to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed . . ."

**Constitution of the State of Ohio:**

Article I, Section 9:

"All persons shall be bailable by sufficient surety, except for capital offenses *where the proof is evident or the presumption great* . . ." (Emphasis added.)

**Ohio Revised Code Section 2945.40:**

"In any case in which insanity is set up as a defense, or in which present insanity of the accused is under investigation by a court or jury, the court may commit the defendant to a local hospital for the mentally ill, or the Lima State hospital, where the defendant shall remain under observation for such time as the court directs not exceeding one month. The court may in such case appoint one or more, but not more than three, disinterested qualified physicians, specialists in mental diseases, to investigate and examine into the mental condition of the defendant and testify as experts at his trial or other hearing. In case of such appointment the court shall forthwith notify counsel of the names and addresses of the persons so appointed. The expert witnesses appointed by the

court may be called by the court and shall be subject to examination and cross-examination by the prosecuting attorney and counsel for the defendant. The appointment of such expert witnesses, and their testifying as witnesses, shall not preclude the prosecuting attorney or defendant from calling other witnesses to testify on the subject of insanity. Such persons so appointed may be required by the court to prepare a written statement under oath, concerning the mental condition of the defendant, and file the same in the case. Such report shall not be read as evidence, except that it may be used by either counsel on the cross-examination of the witness who signed the same. The court shall instruct the jury in case of such appointment and testimony of such expert witnesses, that the credibility of such witnesses, in common with all other witnesses in the case, is for the exclusive consideration and determination of the jury. Persons so appointed shall be paid a reasonable fee for their examination or service and their reasonable expenses, the amount whereof shall be certified by the judge of court making the appointment and paid by the county."

## STATEMENT OF THE CASE.

Defendant was originally indicted for Murder in the First Degree arising out of an incident on October 31, 1969, at the Neighborhood Center at 17th Street and Oberlin Road, Elyria, Ohio, where it was alleged that Stanley Karl Thomas, the Defendant-Appellant, purposely, in deliberate and premeditated malice killed Terry Lee White. On December 3, 1969, the Defendant was arraigned and in Court with counsel; waived reading of the Indictment, and entered a plea of not guilty. At a hearing on Motion for Bond held December 29, 1969, Defendant was granted bond for appearance in the amount of Fifteen Thousand Dollars ($15,000.00). Subsequent thereto, on January 20, 1970, the Defendant, in open Court, waived a Jury Trial and requested Trial by a three Judge Court; and the case was set for trial on Monday, March 2, 1970. On said date, and after the case being called for trial before a three Judge Panel, Defendant in Court with Counsel entered an additional plea of not guilty by reason of insanity, and requested appointment of private psychiatrists to determine his present sanity and ability to aid in his defense; Defendant's request for private psychiatrists was denied, and the Defendant was ordered to be admitted to Lima State Hospital for examination for a period not to exceed one (1) month pursuant to Ohio Revised Code Section 2945.40. On April 20, 1970, the Defendant in open Court with Counsel waived the ten (10) day notice required by law for a hearing upon the report of the examination by Lima State Hospital. There being no objection to said report, and upon the evidence submitted, the Defendant was found to be sane. A ruling on Application for continuance of bond was deferred, and the Defendant was committed to custody of the Sheriff pending a ruling on the bond. Bond was

ordered cancelled and Defendant was ordered committed to Lorain County Jail without bond pending trial. Thereafter, trial was held before a three Judge Panel consuming four (4) days of actual trial time, during which, in excess of thirteen (13) witnesses were called.

On October 31, 1969, at the Elyria Neighborhood House in Elyria, Ohio, at approximately 10:00 p.m., the Decedent, Terry Lee White, was stabbed by the Defendant sixteen times. The decedent had arrived at the Neighborhood House shortly before 10:00 p.m. from a football game. The Defendant arrived moments later and approached the decedent in the parking lot. A conversation ensued, whereupon, the Defendant, wearing a three-quarter length coat, opened said coat in a manner suggesting that he was unarmed. Suddenly, the Defendant began striking the decedent with what later proved to be a hunting knife inflicting sixteen major stab wounds. The three Judge Panel reached a verdict finding the Defendant not guilty of Murder in the First Degree, but found the Defendant guilty of Murder in the Second Degree with one (1) Judge dissenting. Defendant was thereafter sentenced to the Ohio State Penitentiary for life.

Appeal was subsequently filed with the Court of Appeals, Ninth Judicial District, Lorain County, Ohio, Case No. 1911. The Court of Appeals for said District filed an Opinion decided on January 20, 1971, stating that upon examination of the record in light of the several claimed errors, they find nothing prejudicial to the substantial rights of the Defendant, and the Judgment must be affirmed; whereupon, a Notice of Appeal was filed with the Ohio State Supreme Court to be considered as a Motion for Leave to Appeal a felony case. The Supreme Court of the State of Ohio denied Petitioner leave to appeal without oral hearing.

**ARGUMENTS RELIED ON FOR DENIAL OF THE WRIT.**

The allowance of bail where one is indicted for a capital offense is a question addressed to the sound legal discretion of the Court. It is true that the Petitioner was granted bail after a full hearing on the merits on December 29, 1969. Subsequently, a plea of not guilty by reason of insanity was entered on behalf of the Petitioner. However, it is of particular significance to note that Petitioner's bond was revoked two days after a hearing on the Petitioner's report from the Lima State Hospital for the Criminally Insane. It seems quite logical that since the allowance of bail in a capital offense is within the sound discretion of the Court, that the revocation of same bail is within the sound discretion of the Court. To presume that the Court abused its sound discretion is to indulge the Petitioner in pure conjecture and speculation insofar as the revocation of bail was effected only after the Petitioner's plea of not guilty by reason of insanity, and the report from the Lima State Hospital for the Criminally Insane.

It should also be mentioned that the Petitioner did not submit an Application for continuance of his bond nor filed a Writ of Habeas Corpus requesting the continuance of his bond.

The respondent is bewildered and perplexed as to how this Pretrial procedure is a denial of the Petitioner's right to fair and impartial trial. The Petitioner attempts to equate the revocation of the accused's bond with biasness on the part of the Court hearing the trial of the Petitioner. This equation is purely a bold assertion of presumptuous and speculative argument which is not documented in Petitioner's Memorandum.

On December 3, 1969, the Petitioner was arraigned and entered a plea of not guilty. On March 2, 1970, on the scheduled trial date, the Petitioner entered a plea of

not guilty by reason of insanity. In accordance with Ohio Revised Code Section 2945.40, "In any case in which insanity is set up as a defense . . . the court may commit the defendant to . . . , or the Lima State Hospital . . .", the Petitioner was committed to said State hospital. As pointed out in Petitioner's Brief, the provisions of said statute are permissive and hence the Court did not abuse its discretion by committing Petitioner to said Hospital.

There being no abuse of the Court's discretion in committing Petitioner to the Lima State Hospital, it would be indeed a strained and dubious conclusion to equate the Court's act and decision with biasness and an impartial trial as the Petitioner so asserts.

The questions raised herein were reviewed by Appellate courts of the State of Ohio and found to be without merit. The record does not reflect any biasness on the part of the Court, in fact the record clearly repudiates the tainted inferences asserted by the Petitioner.

The propositions of law as assigned by the Petitioner independently or cumulatively do not set forth a substantial constitutional question. The revocation of Petitioner's bond prior to trial in no way denied the Petitioner a fair trial. The language of Section 2945.40 is discretionary with the Court, as it relates to the Disposition of a Defendant upon a plea of not guilty by reason of insanity. Neither the Petitioner's Memorandum nor the record manifests an abuse of judicial discretion.

Furthermore, that even if the said propositions of law be error, which we specifically deny, said errors are not prejudicial error, but rather harmless error and hence the Petitioner was accorded a fair trial.

## CONCLUSION.

The State of Ohio submits that the Petitioner, Stanley Karl Thomas, was accorded a fair trial in accordance with the Constitutions of the United States and State of Ohio. That pursuant to said fair trial, the Petitioner was found Guilty of Second Degree Murder by a panel of three (3) Judges.

We submit that no error occurred during the proceedings of this trial, and most assuredly, if any error was committed, which we expressly deny, it was harmless error.

We further submit that Petitioner has not alleged errors which represent substantial constitutional questions of law.

Having been afforded a fair trial, we submit that the Verdict of the three-judge panel be affirmed and certiorari be in this case denied.

Respectfully submitted,

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*State of Ohio.*

## APPENDIX A.

### ORDERS OF THE SUPREME COURT OF THE STATE OF OHIO.

(Entered September 15, 1971.)

No. 71-335.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO, CITY OF COLUMBUS.

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STATE OF OHIO,
*Appellee,*
vs.
STANLEY KARL THOMAS,
*Appellant.*

---

ORDER DISMISSING APPEAL.

This cause, here on appeal as of right from the Court of Appeals for Lorain County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Lorain County for entry.

ORDER OVERRULING MOTION FOR LEAVE TO APPEAL.

It is ordered by the Court that this Motion is overruled.

## APPENDIX B.

### OPINION OF THE COURT OF APPEALS.

(Decided January 20, 1971.)

Case No. 1911.

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT OF OHIO
COUNTY OF LORAIN

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STATE OF OHIO,
*Plaintiff-Appellee,*

vs.

STANLEY KARL THOMAS,
*Defendant-Appellant.*

---

An appeal on questions of law has been lodged in this Court from a judgment of guilty of murder in the second degree, entered by a panel of three judges sitting to determine the facts in place of a jury. The jury was duly waived, in writing, by the Defendant (appellant).

It is the claim of Stanley Karl Thomas that:

1. "The Court erred in refusing to admit testimony as to the character of the decedent.

2. "The trial court committed error by applying the rule set forth in Clark v. State, 12 O. 483 (commonly referred to as the M'Naghten Rule) in determining the question of legal sanity.

3. "The facts and circumstances surrounding the death of Terry Lee White are reasonably reconcilable on a theory other than murder, thus inconsistent with the verdict as rendered.

4. "The conduct of the trial court and/or the chief Judge, Paul J. Mikus, before and during trial was improper and violated the defendant's constitutional rights to a fair trial.

5. "The court erred in failing to grant the motions of the defendant at the conclusion of the state's case.

6. "The verdict was against the manifest weight of the evidence."

The record herein shows a very typical situation in a case of this nature. While it is true that there is a great conflict in testimony, there is no question but that Terry White met his death at the hands of Stanley Karl Thomas. That death was caused by numerous stab wounds inflicted upon White by Thomas on the grounds of a place in Elyria, Lorain County, Ohio, known as Neighborhood Center. Thomas, White and others, had attended a football game on the night of October 31, 1969. Both White and Thomas were very young married men. Thomas had lost his vision in the left eye, but otherwise he was in good health; he was six feet tall and weighed 170 pounds. Conflict arose between the parties because of a statement that the wife of Thomas had gone out with White. At the Neighborhood Center, after the football game, Thomas, who had borrowed a knife from a friend that night, approached White. A fight ensued; whether White struck Thomas with a whiskey bottle before Thomas struck White in the thigh, or whether it was "simultaneous," as one witness said, was a matter for the trier of the facts to conclude. Many stab wounds, with the result of death did occur. From this evidence, the trier of the facts could rightly conclude that Thomas was the aggressor.

We believe, from a reading of this record, that the case was well tried by the court and the lawyers. In reading typewritten testimony, it is impossible to get the inflection of voices, stresses of syllables and enunciation of words. We find no prejudice evidenced against anyone or by anyone in this record.

There was comment from the court, during an interruption of the argument by Mr. Zagrans, that indicated an unfamiliarity with the clarification of the Ohio rule on insanity as a defense, set out in the case of *State v. Staten*, 18 Ohio St. 2d 13, but the trial court then indicated that it would have the testimony transcribed for the purpose of considering that testimony in the light of the rule, as clarified. We are certain that the Court considered the testimony of Doctor Corzo, who, at page 360 of the record, indicated that the defendant would "most likely not"—"have the ability to refrain from performing these acts" (stabbing).

We have, with care, examined the record in the light of the several claims of error, and find none prejudicial to the substantial rights of the defendant (appellant). The judgment must be affirmed.

Judgment affirmed.

## APPENDIX C.

### JOURNAL ENTRY OF THE COURT OF APPEALS.

Case No. 1911.

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT OF OHIO
COUNTY OF LORAIN

---

STATE OF OHIO,
*Plaintiff-Appellee,*

vs.

STANLEY KARL THOMAS,
*Defendant-Appellant.*

---

This cause came on to be heard on appeal on questions of law by the said Stanley Karl Thomas, Appellant herein, the original papers or transcripts thereof, and a duly certified Transcript of the Docket and Journal Entries of the Court of Common Pleas of Lorain County, Ohio, filed therewith in the said case, wherein the State of Ohio was Plaintiff and Stanley Karl Thomas was Defendant, and was argued by counsel, and submitted to the Court.

Upon consideration whereof the Court finds that in the record and proceedings aforesaid there is no error prejudicial to appellant manifest upon the face of the Record of said Court of Common Pleas, and the judgment of said Court of Common Pleas is affirmed.

It is ordered that the said Appellant pay the costs of this Proceeding taxed at $ , and in default thereof that execution issue therefor.

The Court finds there was reasonable cause for this appeal.

It is further ordered that a Special Mandate issue out of this Court directing the Court of Common Pleas of Lorain County, Ohio, to carry this Judgment and order for costs into execution.

## APPENDIX D.

### OPINION OF THE COURT OF COMMON PLEAS.

Case No. 15050.

IN THE COURT OF COMMON PLEAS

STATE OF OHIO, LORAIN COUNTY, SS.

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STATE OF OHIO,
*Plaintiff,*

vs.

STANLEY KARL THOMAS,
*Defendant.*

---

This day again came the Prosecuting Attorney on behalf of the State of Ohio and the Defendant, Stanley Karl Thomas, in his own proper person being in open Court with his counsel, and the trial proceeded. The panel of three judges resumed deliberation after retiring to their room.

Afterwards came said judges into open Court with their Verdict in writing signed by each Judge, concurring and dissenting and saying:

We, the undersigned Trial Judges, find the Defendant, Stanley Karl Thomas, not guilty of Murder in the First Degree, as he stands charged in the indictment, but find the Defendant guilty of the included offense of Second

Degree Murder, in violation of Section 2901.05 of the Ohio Revised Code of Ohio.

Thereupon the Defendant being inquired of if he hath anything to say why judgment should not be pronounced against him, and showing no good and sufficient cause why judgment should not be pronounced, it is the JUDGMENT OF THE LAW AND THE SENTENCE OF THE COURT that the Defendant, Stanley Karl Thomas, be, and he hereby is, sentenced to be again taken into the Jail of Lorain County, Elyria, Ohio; thence within five (5) days to the Penitentiary of the State of Ohio, Columbus, Ohio, there to serve a life imprisonment according to law for violation of ORC 2901.05, and to pay the costs of this prosecution for which execution is awarded.